

## **PANM's Comments on the FTC's Proposed Rule**

### **“Business Opportunity Rule, R511993”**

**PANM supports regulations necessary to protect consumers while ensuring the rights of legitimate businesses to operate without unreasonable encumbrances.**

(The Professional Association for Network Marketing is a nonprofit trade association representing companies, independent marketers, and support vendors in the multi-level/network marketing industry.)

In regards to the aforementioned proposed rule, PANM has the following comments:

#### **Simplifying the Proposed Rule and Making it More Enforceable**

#### **Overview of Definition of “Business Opportunity”**

The definition of “business opportunity” that will fall under the purview of this law must be clearly defined and should NOT include

- those programs that do not have a mandatory investment of at least \$500.00\* within the first six months of one entering the program (sales aids and training materials and/or services are excluded from the \$500.00 threshold if they are sold at company cost)

\*There are some states that already have threshold amounts that are used within that six-month time frame in their definitions of what constitutes a “business opportunity.”

- those programs that have a refund policy for new independent marketers guaranteeing buyback of goods returned in resalable condition within a ninety-day period (minimum of 90% buyback with a 10% allowable restocking charge)

(If the company’s offerings include the sale of various services, a commercially reasonable guarantee or warranty for those services would have to be included.)

By excluding those programs that adhere to the above two tenants, then only those programs with mandatory investments of \$500.00 or more in the first six months of business that do not have strong refund policies would be subject to the final business opportunity rule that would be enacted.

This is how the rule should function since those programs with such small sums involved having generous refund policies essentially pose no threat to prospective independent marketers.

In addition, two important points should be noted...

- a) **this would encourage new programs to be designed that would fall under these threshold amounts and would encourage generous refund policies**
- b) **this would make for a rule that would be far easier to enforce since it would target only those programs that involve larger mandated sums of monies.**  
**There are already far too many regulations that are unenforceable due to the wide net of people and/or legitimate businesses that fall under their purview.**  
**The public is well aware of this and expects reasonable regulations that can be enforced.**

Those programs that would fall under the Rule would have to adhere to the finalized Disclosure and Record Retention Requirements contained in the finalized Rule.

Note: There should be no seven-day waiting period before an independent marketer can sign an application/agreement or buy a starter kit regardless of whether or not the program falls under the classification of a “business opportunity.” A waiting period would not only hamper the growth of both the company’s business and that of the sponsor, but also the new marketer who, after making a decision to start his/her business, is typically anxious to begin building that business.

## **I. Disclosures**

- a) **Identifying the Company and the person introducing the “business opportunity”** (name, address and phone number of the Company along with the name of the sponsor and the date on which the disclosure document is given to the prospect)

**This information is already normally disclosed in the course of initiating business with a new independent marketer within our industry.**

- b) Earnings Claim Information**

There are already various disclosures that must be made by companies when earnings claims are expressed. Therefore, we do not find it necessary to incorporate this into the proposed rule.

- c) Legal Claim Disclosure**

Convictions involving fraud, unfair, or deceptive practices could be part of the mandated disclosures as well as consent agreements and/or assurances of voluntary compliance. However, the reporting of all civil or criminal action could actually cause an increase in the number of frivolous lawsuits, false charges, etc. made by detractors or competitors hoping to negatively impact a company’s business. The U.S. is the most litigious country in the world. Setting a stage for more frivolous lawsuits should not be pursued.

**d) Seller disclosing refund policy**

Yes, once again this is already done in the normal course of doing business with a new independent marketer in our industry.

- e) **Cancellation and Refund Requests**...reporting these details serves no purpose at all since, in any particular business, even if the majority of people terminate their businesses at some point, this does not mean the business is of no value. People do so for a variety of reasons... illness, divorce, time and effort needed to nourish the business, etc. (Especially in our industry where the application fee is so nominal, people don't make a large investment that could provide an extra incentive to work hard and stay the course.)

**Also, competitors could easily garner this information and then try to use it to their advantage.**

f) **Reference List** This part of the proposed rule contains an egregious violation of one's privacy that PANM stands firmly against. The data the FTC is requiring is a critical confidential and proprietary asset of a company and in no way should the company and/or its marketers have to make such disclosures. In addition, anyone contemplating a business opportunity can always ask for references and if they are not given any can make the decision not to take advantage of that opportunity.

**II. Record Retention**

**These record requirements will vary according to how the Rule is finalized.**

- a) materially different versions of disclosure/earning claims documents (agree)
- b) disclosure receipt (agree)
- c) written (NOT oral) Cancellation or Refund receipts kept for 3 years (agree)
- d) substantiation for earning claims (agree in accordance with disclosures that already must be made by companies when income claims are expressed)

**To summarize, only those programs that fall under the definition of what constitutes a "business opportunity" for the purpose of this rule should have to adhere to the finalized rule. We have set forth a possible definition for discussion and have also supplied comments relating to the components of the proposed rule as written by the FTC.**

Respectfully submitted by  
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